



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 25, 2011

Ms. Janet I. Monteros  
Assistant County Attorney  
El Paso County Attorney's Office  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2011-04097

Dear Ms. Monteros:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 413361 (CA - OP-11-024).

The El Paso County Sheriff's Office (the "sheriff") received a request for a specified police report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in pertinent part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). Upon review, we find the submitted information was used or developed in an investigation by the sheriff of alleged or suspected child abuse under chapter 261. *See id.* § 261.001(1)(E) (definition of child abuse includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code section 22.021). Accordingly, we find that the submitted information is within the scope of section 261.201 of the Family Code. You do not indicate that the sheriff has adopted a rule that governs the release of this type of information; therefore, we assume that no such rule exists. Given that assumption, we conclude the submitted information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In this instance, however, the requestor may be the father of the child victim listed in the information at issue. Further, the requestor is not the individual alleged to have committed the suspected abuse. *See* Fam. Code § 261.201(k). As it is not clear whether the requestor

is the child's parent for purposes of section 261.201(k), we must rule conditionally. If the requestor is not a parent of the child victim listed in the report, the submitted information is confidential in its entirety under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>1</sup> See ORD 440 at 2.

If the requestor is a parent of the child victim, the sheriff may not use section 261.201(a) to withhold the submitted information from this requestor. See Fam. Code § 261.201(k). Section 261.201(l)(2), however, states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, because you also assert section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, section 552.103 of the Government Code, and section 552.108 of the Government Code, we will address your arguments under those exceptions.

Section 552.101 also encompasses section 58.007 of the Family Code, which provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

*Id.* § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct indicating a need for supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. See *id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of the Family Code). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. See *id.* § 51.02(2). Upon review, we find that the submitted information involves allegations of a juvenile

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<sup>1</sup>As our ruling under this scenario is dispositive for the submitted information, we need not address your remaining arguments against the disclosure of the submitted information.

engaged in delinquent conduct occurring after September 1, 1997. It does not appear, that any of the exceptions in section 58.007 of the Family Code apply to this information. Thus, the submitted information is subject to section 58.007(c), and must be withheld in its entirety under section 552.101 of the Government Code.<sup>2</sup>

In summary, if the requestor is not a parent of the child victim listed in the submitted report, then the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the parent of the child victim, then the sheriff may not use section 261.201(a) of the Family Code to withhold the submitted information; the sheriff must nevertheless withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We note that because section 261.201(a) of the Family Code protects all "files, reports, communications, and working papers" related to an investigation of child abuse and section 58.007 of the Family Code protects all law enforcement records relating to juvenile conduct, the sheriff must not release front page offense report information when information is being withheld in its entirety under section 552.101 of the Government Code in conjunction with either section 58.007 of the Family Code or section 261.201 of the Family Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/tf

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of the submitted information.

Ref: ID# 413361

Enc. Submitted documents

c: Requestor  
(w/o enclosures)